IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 84 of 2006
In
COMPANY APPLICATION No. 110 of 2006
With
COMPANY PETITION No. 85 of 2006
In COMPANY APPLICATION No. 109 of 2006
With
COMPANY PETITION No. 86 of 2006
In COMPANY APPLICATION No. 106 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

1.KANOI CHEMICALS LTD.,
2.Pramukh Intermediates Pvt.Ltd.,
3. British Super Alloys Pvt. Ltd: Petitioners.

==========

Appearance :
MR PRANAV G DESAI for Petitioner(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/02/2007
ORAL JUDGMENT

Company Petition No. 84 of 2006 and

Company Petition No. 85 of 2006 are filed by Kanoi Chemicals Ltd., and Pramukh Intermediates Pvt.Ltd., respectively [both Transferor Companies] to consider and if thought fit to sanction the proposed Scheme of Amalgamation of Kanoi Chemicals Ltd., and Pramukh Intermediates Pvt.Ltd., into British Super Alloys Pvt. Ltd., [Transferee Company]. Company Petition No. 86 of 2006 is filed by the British Super Alloys Pvt.Ltd., [Transferee Company] also to consider and if thought fit to sanction with or without modification the proposed Scheme of Amalgamation of Transferor Company into the Transferee Company.

2. So far as Company Petition No.84 of 2006 is concerned, it is submitted that having procured and produced the written approval of all the equity shareholders and the unsecured creditors and there being no secured creditor, pursuant to the order passed by this Court dated 17th March 2006 in Company Application No. 110 of 2006, the meeting of the equity shareholders and

the unsecured creditors in relation to the proposed scheme of amalgamation as required under Section 391(2) of the Companies Act were dispensed with.

3. Similarly, as regards Company Petition No. 85 of 2006 is concerned, it is submitted that having procured and produced written approval of all the equity shareholders and the unsecured creditors and there being no secured creditor, the meeting of the equity shareholders and unsecured creditors in relation to the proposed Scheme of Amalgamation as required under Section 391(2) of the Act was dispensed with pursuant to the order passed by this Court dated 17th March 2004 in Company Application No. 109 of 2006. So far as the Transferee Company is concerned, it is submitted that pursuant to the order passed by this Court dated 17th March 2006 in Company Application No. 106 of 2006 having procured and produced written approval of all the equity shareholders and the secured creditors of the Transferee Company, the meeting of the equity

shareholders and the secured creditors of the Transferee Company in relation to the proposed Scheme of Amalgamation as required under Section 391(2) of the Companies Act were dispensed with. It is also further submitted that pursuant to the order passed by this Court a separate meeting of the unsecured creditor of the Transferee Company was convened and held as per the order of this Court and the Chairman of the said meeting has submitted his report dated 1st May 2006 producing the result of the said meeting, and it is reported that all the unsecured creditors of the Transferee Company present and voting have approved and agreed to the proposed Scheme of Amalgamation.

4. It is submitted in all the Company Petitions that the Transferor Company and the Transferee Company belong to the same management and group and all of them are engaged in similar line of activities and therefore the Board of Directors of these companies have thought it fit to restructure them through amalgamation for

achieving synergic advantages. It is further submitted that it is anticipated that combined operations under one company would make administration easy and cost effective. It is further submitted that duplication of the administrative and operative costs will be eliminated resulting in saving of the cost. It is further submitted that amalgamated company would be in a position to maximise its profits through optimum utilization of its resources and the amalgamation will also help to make the management control systems more efficient and effective. It is further submitted that amalgamation will in turn help to make its position stronger and give it a competitive edge over others. It is thus submitted that the amalgamation would be to the mutual advantage of both the Transferor and the Transferee Companies.

5. After the petitions were admitted, the dates of their hearing were duly advertised in newspapers and publication of the said dates in the Government Gazette was dispensed with as per the directions given in the order of this Court.

Nobody has submitted any objection against the proposed Scheme of Amalgamation.

6. Notices of the said petitions have been served upon the Central Government. Shri PJ Malkan, learned Addl.Central Government Standing Counsel has appeared on behalf of the Regional Director. He has produced on record the letter dated 28th September 2006 along with the affidavit affirmed by Assistant Registrar of Companies in Office of Registrar of Companies, Gujarat. It is submitted in the affidavit on behalf of the Central Government that the Central Government has decided not to oppose the said petitions save and except that; (A) the petitioners furnish the latest Balance Sheet as at 31st March 2005 and they may be directed to file latest financial position at the time of hearing; and (B) the Authorised Capital of the Transferee Company is 1.25 Crores and the Paid-up Capital is Rs.1,06,60,900 and therefore the Authorised Capital is not sufficient to issue shares to the shareholders of the Transferor Companies and that

they may be directed to comply with provisions of Section 94/97 of the Act. Appropos the observations/objections by the Office of the Regional Director, a further affidavit has been filed on behalf of the transferee company dated 20th December 2006. Along with the additional affidavit, the Balance Sheets of all the three companies as on 31.3.2005 and 31.3.2006 are enclosed. So far as the objection with regard to increase in the Authorised Share Capital is concerned, it is submitted on behalf of the petitioners that the procedure with regard to increase in the Authorised Share Capital has been complied with under the Companies Act and filing of necessary forms under the provisions of the Companies Act. Copy of duly stamped Form No.5 as well as Challans duly deposited with concerned authorities and the letter addressed to the Registrar of Companies are also annexed as 'Annexure-II' collectively to the said affidavit. On perusal of the relevant documents with regard to increase in the Authorised Share Capital, it appears that the Authorised Share Capital has

been further increased by Rs. 20 lakhs and it has been revised to Rs. 1.45 Crores. Shri Malkan, learned advocate appearing on behalf of the Central Government has submitted that still there would be deficit in the Authorised Share Capital and according to him it should be raised to Rs. 23 lakhs instead of Rs. 20 lakhs. Shri Pranav G. Desai, learned advocate appearing on behalf of the petitioners has submitted that the petitioners would not have any objection in further increasing the Authorised Share Capital by further sum of Rs. 3 lakhs [total increase in Authorised Share Capital to Rs. 23 lakhs], i.e., revising Authorised Capital upto Rs. 1,48,00,000. It is submitted that subject to increase in Authorised Capital to the aforesaid extent, the proposed Scheme of Amalgamation be sanctioned.

7. On service of notice upon the Official Liquidator, the Official Liquidator has submitted his report stating on the basis of the report of the Chartered Accountant and the information furnished by the Transferor Company that the acts

and transactions of the Company were conducted within the objects mentioned in the Memorandum of Association of the Company and the affairs have not been conducted in a manner prejudicial to the interests of the members or to public interest.

8. I have heard Shri Pranav G. Desai, learned advocate appearing for the petitioners in all the three petitions. I have also heard Shri PJ Malkan, learned Addl.Central Government Standing Counsel on behalf of the Central Government. The scheme has detailed the benefits which it will bring to all the three Companies under the same management on account of amalgamation of all the Companies including Memorandum of Association and the administration, marketing and operative costs would increase profitability of the company which would result into economise of scale and integrated operations. It is submitted that amalgamation would be to the mutual advantage of the Transferor Companies and the Transferee Company. All the shareholders as well as the creditors of

all the companies have approved the Scheme of Amalgamation and there is no objection from any of the shareholders or any of the creditors to the Scheme of Amalgamation. Even the Unsecured Creditors of the Transferee Company have also approved the proposed Scheme of Amalgamation. Despite advertisement of public notice of all these petitions in two daily newspapers having largest circulation in the State, nobody has submitted any objection. Subject to increasing the Authorised Share Capital upto Rs. 1,48,00,000, there is no reason for disapproving the Scheme of Amalgamation. The Scheme of Amalgamation does not appear to be contrary to law or contrary to public interest. The objections raised by the Central Government are dealt with hereinabove. The objections raised by the Central Government are dealt with hereinabove. The Official Liquidator attached to this Court has also submitted his report and no objection has been raised by the Official Liquidator. Hence there does not appear to be impediment to sanction the Scheme of Amalgamation

as proposed.

9. For the reasons stated above and subject to increasing the Authorised Share Capital of the Transferee Company upto Rs. 1.48 Crores, all these Company Petitions, i.e., Company Petition No. 84 of 2006, Company Petition No. 85 of 2006 and Company Petition No. 86 of 2006 are allowed. The prayer in terms of 15(a) of Company Petition No. 84 of 2006, 85 of 2006 and 86 of 2006 are hereby granted.

10. So far as the cost to be paid to the learned Additional Standing Counsel is concerned, the same is quantified at Rs. 3,500/- per petition and the same may be paid by the petitioners to Shri PJ Malkan, learned counsel appearing for the Central Government.

[M.R. Shah, J.]

rmr.